IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1025 OF 2006

Sunil Kumar Agarwal.]
Indian inhabitant of Haryana residing]
at 313-A, Beverly Park, Lane No.1,]
D.L.F., Gurgaon, Haryana, through his]
Constituted Attorney Mr. Prashant Nair.] .. Petitioner

Versus

1. Special Recovery Officer,]
attached to Abhyudaya Co.op. Bank]
Ltd., having his office at Recovery]
Department, Abhyudaya Bank Building]
2nd floor, Nehru Nagar, Kurla (E),]
Mumbai - 400024.]

2. Abhyudaya Co.op. Bank, Ltd.,]
a Scheduled Bank, having its]
Administrative Office at K.K. Tower]
Abhyudaya Bank Lane, Off. G.D.]
Ambedkar Marg, Parel Village,]
Mumbai - 400 012.]

3. Reserve Bank of India,]
Urban Banks Department, having their]
regional office at 2nd floor,]
Garment House, Worli, Mumbai-400018.]

4. Union of India,]
Secretariate Building, New Delhi.] .. Respondents

Mr. R.D. Soni i/b Dharam & Co. for the petitioner.

Mr. Milind More for the respondents No.1 and 2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 25TH APRIL, 2006

ORAL JUDGMENT: [Per Anoop V. Mohta, J.]

. The petitioner, through his Constituted Attorney, has challenged the action of respondents No.1, 2 and 3 of withholding the documents of plot No.1935 at Kalamboli Warehousing Complex, Kalamboli, New Mumbai, and prayed for a direction against respondent No.1 - Special Recovery Officer (for short "SRO") to issue letter of discharge from the said plot to CIDCO.

2. The petitioner Sunilkumar, Anilkumar and Lalitkumar Agarwal (HUF) constituted a Partnership Firm named as M/s. Bansal Iron & Sheet Traders (for short "M/s. Bansal") on 1st April, 1984. The said Partnership Firm purchased a plot of land bearing No.1935 at Kalamboli, New Mumbai.

3. Sometime in the year 1994, M/s. Sunakshi Steel (for short "M/s. Sunakshi"), a Proprietor Firm of Mr. Lalitkumar Agarwal availed loan facility, from respondent No.2, Abhyudaya Cooperative Bank Limited, Mumbai. The Partnership Firm M/s. Bansal stood as surety/guarantor and made available the plot in question to respondent No.2-Bank as security.

4. On 31st May, 1997, Lalitkumar Agarwal (HUF) retired from the Partnership Firm. On 1st April, 2000, the said Firm was dissolved and its assets and liabilities were distributed amongst the two Partners, the petitioner and Mr. Anilkumar Agarwal. The land in question came to the share of the petitioner.

5. The borrower M/s. Sunakshi Steel of Mr. Lalitkumar Agarwal was unable to repay the loan. Respondent No.1, therefore, initiated the recovery proceedings. The Recovery Certificate under Section 101 of the Maharashtra Cooperative Societies Act was issued. Respondent No.1 was appointed as Special Recovery Officer to recover the dues of respondent No.2-Bank. Sometime in the year 2002, respondent No.1-SRO levied the charge and attached the plot in question.

6. By September, 2005, the borrower M/s. Sunakshi Steel settled and paid the dues of respondent No.2 under One Time Settlement Scheme. Respondent No.2, therefore, issued their No Dues Certificate with a rider in the said letter of discharge that the SRO charge on the plot at Kalamboli would be continued as M/s. Sunakshi Steel is a surety to M/s. Ludhiana Steel Traders and is a judgment debtor by further holding that there was indirect liability of M/s. Sunakshi Steel.

The said letter was accepted by the representative of M/s. Sunakshi Steel and the accounts were accordingly closed on 23rd September, 2005.

7. It appears that M/s. Ludhiana Steel Traders had taken a loan from respondent No.2, which today stands in the amount of Rs.199.60 lacs as M/s. Sunakshi Steel had executed documents as sent on 31.3.1997 for the said loan for which Mr. Lalitkumar Agarwal had signed his his individual capacity as proprietor.

8. The petitioner, by his Advocate's letter dated 25th September, 2005, requested respondent No.2 to release the above described plot from their charge and to return the documents. Respondent No.2 resisted the same by their Advocate's letter dated 20th October, 2005, and confirmed of their having issued No Due Certificate to M/s. Sunakshi Steel. They further recorded to have requested respondent No.1 to release the said plot of land. However, the Managing Director of respondent No.2, vide letter dated 4th November, 2005, informed the petitioner's Advocate that as per the Recovery Board's decision, they are not releasing the above plot of land in view of the indirect liability of Lalitkumar Agarwal, the Proprietor of M/s. Sunakshi Steel, who stood surety to the loan of one M/s.

Ludhiana Steel Traders. Respondent No.3, by its communication dated 21st November, 2005, expressed their inability to intervene in the matter.

9. Petitioner, therefore, being aggrieved by the same, has invoked the provisions of Article 226 of the Constitution of India by this Writ Petition.

10. Respondent No.2-Bank has filed reply dated 7th March, 2006, and resisted the claim. In their defence, they averred and supported the decision of the Recovery Board dated 30th August, 2005, by contending that the charge was continued as there was indirect liability of M/s. Sunakshi Steel towards M/s. Ludhiana Steel Traders and as there is balance outstanding of Rs.203.73 lakhs in the account of M/s. Ludhiana Steel Traders and SRO has separately attached the other properties in the said case including the plot in question. They further contended that M/s. Sunakshi Steel has executed documents as surety of M/s. Ludhiana Steel Traders on 31st March, 1997, and Mr. Lalitkumar Agarwal has signed in his individual capacity as a Proprietor and not as HUF. Therefore, the SRA’s charge on the plot in question is continued even after closure of the account of M/s. Sunakshi Steel, as M/s. Sunakshi Steel has been a surety to M/s. Ludhiana Steel Traders. It is

further mentioned that the property in question at Kalamboli has been attached by the SRO for the dues of M/s. Sunakshi Steel.

11. Undisputedly, M/s. Sunakshi Steel is a proprietory concern of Lalitkumar Agarwal. He in his individual capacity by one-time settlement, paid the loan to respondent No.2. The plot in question, at the relevant time, was in the name of the Firm M/s. Bansal who stood surety to the loan account of M/s. Sunakshi Steel. Mr. Lalitkumar Agarwal (HUF) was a partner of M/s. Bansal. M/s. Bansal a firm of which petitioner was a partner, never stood surety for the loan account of M/s. Ludhiana Steel Traders. Lalitkumar Agarwal, a proprietor of M/s. Sunakshi stood as surety to the loan account of M/s. Ludhiana Steel Traders. Therefore, the respondents action of not releasing the said plot of land which is now owned by the petitioner, is not illegal. The petitioner’s Firm, M/s. Bansal was in no way directly concerned with the liability of M/s. Sunakshi Steel and even of M/s. Sunakshi Steel, a proprietory firm of Lalitkumar Agarwal. Undisputedly, Lalitkumar Agarwal (HUF) was a partner along with the petitioner and one Anilkumar Agarwal of M/s. Bansal. Lalitkumar Agarwal, in his HUF capacity, retired from the said Partnership of M/s. Bansal on 31st March,

1997. The Partnership Firm of petitioner M/s. Bansal was dissolved on 1st April, 2000 and the land in question came to the share of the petitioner. The withholding of documents in question on the ground of indirect liability of M/s. Sunakshi, a proprietory concern of Lalitkumar is, therefore, incorrect.

12. M/s. Sunakshi Steel, a proprietory concern owned by Lalitkumar Agarwal in his individual capacity stood guarantor for M/s. Ludhiana Steel Trader. Lalitkumar Agarwal who was a partner in his HUF capacity of M/s. Bansal, retired from the said Partnership on 31st March, 1997. Therefore, the liability of Lalitkumar Agarwal, in his individual capacity as proprietor of Sunakshi Steel cannot be imposed upon the petitioner being partner of M/s. Bansal. Lalitkumar Agarwal was not the partner of petitioner’s firm of M/s. Bansal in his individual capacity. The concept of indirect liability of M/s. Sunakshi Steel, therefore, is incorrect. Respondent No.1 is also wrong in holding that the interest of Lalitkumar Agarwal in the plot in question as coparcener of Lalitkumar Agarwal (HUF) is also incorrect. The concept of property of an individual and of a coparcener of HUF is separate and distinct under the law. The liability of Lalitkumar Agarwal in his individual capacity cannot be imposed

upon the coparcener of Lalitkumar Agarwal (HUF). There is no denial to the fact that the plot in question was no longer the property of Lalitkumar Agarwal (HUF) as he retired from the firm of M/s. Bansal in the year 1997 itself. The charge was levied upon the said plot only in the year 2000. Therefore, the action of withholding and/or of non-releasing the documents of the plot in question has no foundation of law, merely because there is outstanding balance in the account of M/s. Ludhiana Steel Traders, Respondent No. 2 cannot claim a right in the property. The respondent cannot continue to charge the plot in question by holding that Anil Kumar Agarwal has an interest in the title.

13. Taking all the above factors into consideration we are inclined to hold that the action of respondent of withholding petitioner’s property is unjustified and incorrect and not in accordance with law. The Petition is allowed and we direct respondent No.1 to discharge the charge from the plot No.1935 at Kalamboli Warehousing Complex, Kalamboli, New Bombay, and to hand over the documents to the petitioner and to issue letter of discharge to CIDCO, by following the due procedure of law.

14. The Petition is allowed with no order as to

costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]